

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KYLE AVERY
CDCR #E-67897,

Plaintiff,

v.

D. PARAMO, et al.,

Defendants.

Case No.: 13cv2261-BTM (DHB)
*Consolidated with Civil Case No.
13cv3169-BTM (DHB)

**ORDER DENYING PLAINTIFF'S
MOTION FOR APPOINTMENT OF
COUNSEL**

[ECF No. 63]

On March 2, 2016, Plaintiff filed a motion requesting appointment of counsel. (ECF No. 63.) For the reasons set forth below, Plaintiff's motion is **DENIED**.

"There is no constitutional right to appointed counsel in a § 1983 action." *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981)); *see also Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360, 1363 (9th Cir. 1994) ("[T]here is no absolute right to counsel in civil proceedings.") (citation omitted). Thus, federal courts do not have the authority "to make coercive appointments of counsel." *Mallard v. United States Dist. Ct.*, 490 U.S. 296, 310 (1989); *see also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995).

Districts courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to "request" that an attorney represent indigent civil litigants upon a showing of exceptional

1 circumstances. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th
 2 Cir. 2004); *Rand*, 113 F.3d at 1525. “A finding of the exceptional circumstances of the
 3 plaintiff seeking assistance requires at least an evaluation of the likelihood of the plaintiff’s
 4 success on the merits and an evaluation of the plaintiff’s ability to articulate his claims ‘in
 5 light of the complexity of the legal issues involved.’” *Agyeman*, 390 F.3d at 1103 (quoting
 6 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)); *see also Terrell v. Brewer*,
 7 935 F.2d 1015, 1017 (9th Cir. 1991).

8 Here, Plaintiff asserts: (a) he is unable to afford retained counsel; (b) the issues in
 9 this case are complex; (c) he has a limited knowledge of the law; (d) the case may impact
 10 unrepresented inmates as a result of the relief Plaintiff seeks yet he is unqualified to
 11 represent those inmates who may be impacted by this action; and (e) he does not have the
 12 discovery resources to defend against and obtain expert witnesses. (ECF No. 63 at 1:16-
 13 23.) However, these arguments do not establish that Plaintiff’s situation is any different
 14 than the typical state prisoner pursuing a civil rights lawsuit in federal court, let alone that
 15 his situation is exceptional. Plaintiff has sufficiently represented himself to date. Plaintiff
 16 has not shown how his imprisonment prevents him from sufficiently prosecuting his
 17 lawsuit. Rather, Plaintiff’s numerous filings demonstrate he has a good grasp of his case
 18 and the legal issues involved. Moreover, his opposition to Defendants’ motion for
 19 summary judgment for failure to exhaust demonstrates he has access to legal authorities.
 20 (*See* ECF No. 34.) Further, the Court does not find the issues in this case so complex to
 21 warrant appointment of counsel at this time. Accordingly, at this stage of the proceeding,
 22 the Court finds that Plaintiff has not shown the “exceptional circumstances” required for
 23 appointment of counsel pursuant to 28 U.S.C. § 1915(e)(1). Therefore, the Court **DENIES**
 24 without prejudice Plaintiff’s motion for appointment of counsel.

25 IT IS SO ORDERED.

26 Dated: March 11, 2016



DAVID H. BARTICK
United States Magistrate Judge